

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: Patent Application of	)	
	)	
Michael F. Hoey	)	Group Art Unit: 3736
	)	
App. Ser. No. TBD	)	
	)	Examiner: Charles Alan Marmor II
Filed: March 29, 2004	)	
	)	
For: TISSUE DISCRIMINATION	)	
AND APPLICATIONS IN	)	
MEDICAL PROCEDURES	)	
	)	

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service (Express Mail No. ER310993-539US) under 37 CFR 1.10 on March 29, 2004 and is directed to: Mail Stop: Patent Application, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Jonathan D. Spangler

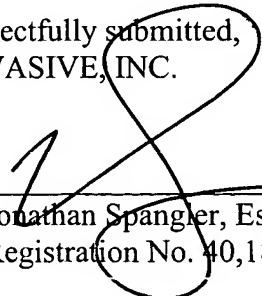
**COPY OF A DECLARATION IN A DIVISIONAL APPLICATION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The attached U.S. Patent Application is a divisional application of previously filed parent application 09/860,648. As per 37 CFR 1.63(d), a copy of the originally executed declaration relating to the parent application is filed herewith. This copy is hereby intended to apply to the attached newly submitted divisional application (Attorney Ref. No. 059US2).

Respectfully submitted,  
NUVASIVE, INC.

By:   
Jonathan Spangler, Esq.  
Registration No. 40,182

March 29, 2004

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Attorney Docket No.: 18808004910  
Client Ref. No.:

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**DECLARATION (37 CFR 1.63) FOR UTILITY OR DESIGN APPLICATION  
USING AN APPLICATION DATA SHEET (37 CFR 1.76)**

As the below named inventor(s), I/we declare that:

This declaration is directed to:

- ☐ The attached application, or  
☒ Application No. 09/860,648, filed on May 18, 2001,  
☐ as amended on \_\_\_\_\_ (if applicable);

I/we believe that I/we am/are the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought;

I/ we have reviewed and understand the contents of the above-identified application, including the claims, as amended by any amendment specifically referred to above;

I/we acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me/us to be material to patentability as defined in 37 CFR 1.56, including material information which became available between the filing date of the prior application and the National or PCT International filing date of the continuation-in-part application, if applicable; and

All statements made herein of my/own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

THIS COPY OF THIS  
DECLARATION IS  
INTENDED FOR  
SUBMISSION WITH THE  
APPLICATION ATTACHED  
HEREWITH.  
(ATT REF No. 059US2)

**FULL NAME OF INVENTOR(S)**

Inventor one MICHAEL HOEY Date: 6/25/01

Signature: [Signature] Citizen of: US

Inventor two CORBETT W. STONE Date: 18 June 2001

Signature: [Signature] Citizen of: US

Inventor three KEVIN FOLEY Date: 7/1/01

Signature: [Signature] Citizen of: US

Inventor four \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Citizen of: \_\_\_\_\_

☐ Additional inventors are being named on \_\_\_\_\_ additional form(s) attached hereto.

Burden Hour Statement: This collection of information is required by 35 U.S.C. 116 and 37 CFR 1.63. The information is used by the public to file (and the PTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 1 minute to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231, PA 3158246 v1

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